



The Comptroller General  
of the United States

Washington, D.C. 20548

CS/len

## Decision

**Matter of:** Lucas Aul, Inc.

**File:** B-234842

**Date:** June 16, 1989

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### DIGEST

General Accounting Office will not object to proposed sole-source award where it does not appear that agency acted unreasonably in concluding that only one known source can meet the government's needs within the required time; the fact that the protester manufactured an earlier version of the item being procured does not render the agency determination unreasonable where the protester is ineligible to receive the secret security clearance required by the solicitation.

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### DECISION

Lucas Aul, Inc., protests the proposed sole-source award of a contract to Sanders Associates, Inc., under request for proposals (RFP) No. DAAB07-89-R-0008, issued by the U.S. Army Communications-Electronics Command (CECOM), for further development and production of the AN/ALQ-144A infrared countermeasure sets. Lucas Aul challenges CECOM's determination that only Sanders can complete development and deliver conforming units within the delivery schedule set forth in the solicitation.

We deny the protest.

The AN/ALQ-144A countermeasure set is an improved version of the AN/ALQ-144 set, and will be used on helicopters to counter or jam advanced infrared anti-aircraft missiles. According to CECOM, rapid development and delivery is necessary because the advanced infrared missiles to be countered by the new unit have already been deployed and now pose a major threat to our aircraft. Although a prototype of the AN/ALQ-144A has been developed and delivered by Sanders, the agency reports that development is not complete and that drawings suitable for manufacturing are unavailable.

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After conducting a market survey and synopsising the requirement in the Commerce Business Daily, the contracting officer prepared, and the Under Secretary of the Army approved, a justification and approval for procurement from Sanders on a sole-source basis, citing the authority of 10 U.S.C. § 2304(c)(1) (Supp. IV 1986). This statutory provision permits a noncompetitive award where only one known responsible source or a limited number of responsible sources are available, and no other type of property or services will satisfy the agency.

In this regard, the agency has determined that in view of the development effort still remaining, only Sanders, as developer of both the AN/ALQ-144 and the AN/ALQ-144A prototype, can satisfy its urgent requirement to field the improved unit; CECOM maintains that award to other manufacturers of the earlier AN/ALQ-144, such as Lucas Aul, would result in substantial delays while the firms became familiar with the design changes in the new model. CECOM states that once a validated technical data package is available for the AN/ALQ-144A, further production requirements will be met through competitive procurement. In the meantime, the agency notes, parts common to both the AN/ALQ-144 and the AN/ALQ-144A will be competitively subcontracted by Sanders.

Lucas Aul disputes the agency's justification for a sole-source award to Sanders, maintaining that its prior production of the AN/ALQ-144 demonstrates its qualifications to complete development and commence production of the new model within the required schedule.

Because the overriding mandate of the Competition in Contracting Act (CICA) is for "full and open competition" in government procurements obtained through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A), we will closely scrutinize sole-source procurements under the exception to that mandate provided by 10 U.S.C. § 2304(c)(1). WSI Corp., B-220025, Dec. 4, 1985, 85-2 CPD ¶ 626. Where, however, the agency has substantially complied with the procedural requirements of CICA, 10 U.S.C. § 2304(f), calling for the written justification for and higher-level approval of the contemplated sole-source action and publication of the requirement CBD notice, we will not object to the sole-source award unless it is shown that there is no reasonable basis for the award. WSI Corp., B-220025, supra; see also Dynamic Instruments, Inc., B-220092, et al., Nov. 25, 1985, 85-2 CPD ¶ 596. In sum, except in those noncompetitive situations that arise from a lack of advance planning, a sole-source award is justified where the agency reasonably concludes that only one known

source can meet the government's needs within the required time. Turbo Mechanical, Inc., B-231807, Sept. 29, 1988, 88-2 CPD ¶ 299.

Although Lucas Aul contends that the sole-source award here is unjustified because it is capable of producing the items within the significant delivery schedule, in fact it is apparent that Lucas Aul was not a viable additional potential contractor since the firm lacks the security clearance needed to perform. Specifically, the contractor is required to possess a secret security clearance to receive certain AN/ALQ-144A design information. Although Lucas Aul possesses a secret United Kingdom (UK) reciprocal facility security clearance and has previously received secret drawings relating to the AN/ALQ-144, that clearance is not adequate here; the firm is considered to be subject to the control of its British parent company and Department of Defense security regulations provide that such a foreign security clearance is not valid for information that has not been determined releasable to the country in which the controlling company is situated. CECOM reports that secret information concerning the AN/ALQ-144A has not been determined to be releasable to the UK, and that Lucas Aul therefore cannot have access to all necessary design information on the AN/ALQ-144A.

Lucas Aul questions whether contracting officials have made an effort to secure an exception to the nondisclosure requirement. There is no general rule, however, requiring an agency to seek an exception to permit release of classified information to a particular individual or company. Moreover, whether release of such information would be consistent with national security concerns is a matter for the cognizant agency and is not for review by our Office under our bid protest function. See Advanced Telecommunications Corp., B-233274, Feb. 24, 1989, 89-1 CPD ¶ 204.

Nothing in the record indicates that any other firm can meet the government's needs within the required time. Certainly, notwithstanding notice of the intended award, none of the other prior manufacturers of the AN/ALQ-144 has protested

procurement on a sole-source basis. We therefore conclude that the proposed sole-source procurement is unobjectionable.

The protest is denied.

*for* *Randall Berger*  
James F. Hinchman  
General Counsel